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APR 26 2007

OFFICE OF PETITIONS

In re Application of
Ho, et al.
Application No. 09/965,419
Filed: September 27, 2001
Attorney Docket No. P18421
For: METHOD AND APPARATUS FOR
ENCODING INFORMATION

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed April 11, 2007, to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any reconsideration petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The Office contends that the above-identified application became abandoned for failure to submit a reply to the February 27, 2006 Notice of Non-Compliant Amendment (Notice), which set an extendable one month period for reply. No extensions of time or reply being received, the Office considered this application abandoned on March 28, 2006. The filing of the present petition precedes the mailing of A Notice of Abandonment.

Petitioners allege that the February 27, 2006 Notice was not received.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

A review of the record indicates no irregularity in the mailing of the February 27, 2006 Notice, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicants at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

The showing in the instant petition is not sufficient to withdraw the holding of abandonment because practitioner did not include a statement that a search of the file jacket indicates that the Office communication was not received.

Petitioner has not provided adequate evidence of non-receipt. The petition is dismissed.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries may be directed to the undersigned at (571) 272-3230.


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¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).